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Writ Petition (C) No. 4995 of 2007

Youth Foundation of India

For Consideration vs Union of India & ors.

I agree,

Sd-/
Dilip Raosaheb Deshmukh
Judge

104/3

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI JAGDISH BHALLA, Ag. C.J. &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

Writ Petition (C) No. 4995 of 2007

Petitioners

1. Youth Foundation of India (An Association registered under the Chhattisgarh Societies Registrikaran Adhiniyam, 1973) through its Administrator Padam Parakh, aged about 66 years, S/o Late Shri Baboo Lal Parakh, R/o. Sadar Baazar, Rajnandgaon, Distt. Rajnandgaon.

2. Anshul Khandelwal S/o Shri Chandra Kishore Khandelwal, aged 24 years R/o Shri Chandra Kishore Khandelwal, P.O. Chourai, District Chhindwara (M.P.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

3. Ankita Shrivastava D/o Dr. M.M. Shrivastava aged about 24 years R/o Dr. M.M. Shrivastava, Shree Vila Mukut Nagar, Raigarh 496001, (C.G.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

4. Abhisekh Agrawal S/o Dr. N.K. Agrawal, aged about 24 years R/o Dr. N.K. Agrawal, C/o Agrawal Nursing Home, Basna, Mahasamund – 493554, (C.G.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

5. Ashish Kumar Agrawal S/o Shri Hemant Agrawal, aged about 26 years R/o Shri Hemant Agrawal, Shyam Garments, Bus Stand, Ludeg, Jahspur 496220, (C.G.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

6. Manisha Rajput D/o Shri R.C. Rajput, aged about 27 years R/o Shri R.C. Rajput, Manisha Vihar, Jawahar, Ward, Kanker (C.G.)

presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

7. Nidhi Thakur D/o Shri B.M. Thakur, aged about 25 years R/o. Shailendra Nagar HIG C/20, Raipur (C.G.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

8. Piyush Kumar Birla S/o Shri K.L. Birla, aged about 24 years R/o Shri J.K. Birla, D-15 Bajaj Colony-2, New Rajendra Nagar, Raipur (C.G.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

9. Pratibha Agrawal D/o Shri Rajkumar Agrawal, aged about 26 years, R/o Rajkumar Agrawal, Thana Chowk, Kurud Dhamtari, (C.G.) 493663 presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

10. Rakesh Jagiasi S/o Shri Purushottam Jagiasi, aged about 26 years R/o Shri Purushottam Jagiasi, LIG-13, Housing Board Colony, North Chakradhar Nagar, Stadium Road, Raigarh 496001, (C.G.) presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

11. Reena Badole D/o Shri G.R. Bodole, aged about 26 years R/o Shri G.R. Bodole, Old Court Area, Palace Road, Jagdalpur, Bastar (C.G.) 494001, presently undergoing internship at C.D.C. & R.I. S. Rajnandgaon (C.G.)

12. Riddhi Golchha S/o Shri Yogesh Golchha, aged about 24 years R/o Yogesh Golchha, Bhomraj Askaran Golchha, Balak Chowk, Dhamtari 493773, (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

13. Ritu Gupta D/o Shri R.N.Gupta, aged about 28 years R/o Shri R.N.Gupta, S.E.P.H.E. Dept. E-2, Nutan Colony, (LG) Sarkanda, Bilaspur (C.G.) 495001 presently undergoing internship at C.D.C. &

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R.I.S. Rajnandgaon (C.G.)

14. Ruchi Bafna D/o Shri Santosh Kumar Bafna, aged about 25 years R/o Shri Santosh Kumar Bafna, Gujari Chowk, Main Road, Balaghat & C/o. Shri Devraj Surana (Adv.) Nanesh Kripa, Civil Line, Raipur (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

15. Rudra Pratap Singh S/o Shri Nageshwar Pratap Singh, aged about 26 years R/o Shri Nageshwar Pratap Singh, A.S.C.R. Office Collector, Land Record Office Branch, Baikunthpur, Koria 497335, (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

16. Sharlee Diwan D/o LT. Col. C.C. Diwan, aged about 25 years R/o LT. Col. C.C. Diwan, C/o Rekha Bhaskar Diwan, F-2/1 A, Civil Lines, Raipur (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

17. Shilpa Dewangan D/o Shri Hari Om P.Dewangan, aged about 26 years R/o Dr.M.K.Dewangan Post-Kharora, Raipur 493225, (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

18. Shweta Sonkushre D/o Shri Shyam Rao Sonkushre, aged about 23 years R/o Shri Shyam Rao Sonkushre, P.H.E. Office Campus, Infront of Menonight Church, Durg 491001, (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

19. Sneha Guruwani D/o Shri S.K. Guruwani, aged about 26 years R/o Shri S.K. Guruwani C/o R.K. Agencies, Near Company Garden, Bilaspur, (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

20. Sudatta Kumar Damle S/o Shri Mahadeo Damle, aged about 27 years R/o Shri Mahadev Damle, Qt. No. 440 Near Buddha Kuti, Shankar Nagar, Durg 491001 presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

21. Tarun Kumar Sahu S/o Shri Ramesh Chandra Sahu, aged about 28 years R/o Shri Ramesh Chandra Sahu, Behind Chhattisgarh School, Mahasamund, (C.G.) presently undergoing internship at C.D.C. & R.I.S. Rajnandgaon (C.G.)

Versus

Respondents:

1. Union of India Through the Secretary Ministry of Health and Family Welfare (Department of Health) PMS Section, Nirman Bhawan, Maulana Azad Road, New Delhi – 110011.

2. Dental Council of India (Constituted under the Dentist Act, 1948) Through the Chairman Ajwan-a-Galib Marg Kotla Road, New Delhi 110002

3. State of Chhattisgarh Through the Secretary, Department of Health and Family Welfare, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh.

Writ Petition under Article 226 of the Constitution of India

Present : Shri Kanak Tiwari, Senior Advocate with Shri Prashant Mishra & Shri Mateen Siddique, counsel for the petitioners.
Thakur Vijay Singh, Assistant Solicitor General with Ms. Sharmila Singhai, counsel for Union of India / respondent No.1.
Shri Manindra Shrivastava, Senior Advocate with Shri Raghavendra Pradhan, counsel for Dental Council of India / respondent No.2.
Shri U.N.S. Deo, Government Advocate for the State / respondent No.3.

JUDGMENT

(Delivered on 21st September, 2007)

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The following Judgment of the Court was delivered by **Hon'ble Jagdish Bhalla, Ag. C.J.**

With the consent of the learned counsel for the parties the matter is heard finally.

Petitioner No.1 is a society registered under the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 and is managing & running Dental College in the name and style of Chhattisgarh Dental College & Research Institute at Rajnandgaon (hereinafter referred to as "College") and is imparting dental education in the State and also carrying research activities in the field of dentistry since its inception in the year 2002. The said college is affiliated to Pt. Ravishankar Shukla University, Raipur. The college is the oldest in Chhattisgarh and well equipped and also have experienced faculty. The said college is being run by minority community of the Jain Society who have been declared as minority community in the State of Chhattisgarh. Petitioner Nos. 2 to 21 are the students who were pursuing their BDS course in the college and had appeared in the BDS examination for the year 2006-2007 and are going to complete their internship on 30.09.2007.

To promote dental education and research, the petitioner No.1-Society opened a Dental College at Rajnandgaon with the permission of Dental Council of India (hereinafter referred to as the "Council") and the said college was allowed to admit 100 students for the academic sessions 2002-03, 2003-04, and 2004-05.

Permission was granted for the year 2002-03 with the condition that admission for second batch i.e. for 2003-04 will be made only after renewal of permission by the Central Government, which is contained in Annexure P/3. Similarly, on the same terms and conditions, permission was granted for the years 2003-04, 2004-05 as contained

in Annexure P/4 & P/5. It was pointed out on behalf of the petitioners that in fact initially for the academic session 2005-06 permission to admit students was not granted, but on the interference of this Court in writ petition No.3443/2005, permission was ultimately granted. The Executive Committee of the Council declined to recommend to the Central Government to renew permission for the 5th BDS course of the petitioner – College with 100 seats on the basis of certain deficiencies in the functioning of the college. After certain communication between the petitioner and authorities, the seats were reduced to 50 for the academic session 2006-07. Whatever deficiencies were pointed out, according to the petitioner, they were removed and respondent No.1 – Union of India was accordingly informed by a letter dated 28.06.2006. In spite of the same, respondent No.2 recommended to the Central Government not to renew permission for 5th BDS course of the petitioner – College, it too without assigning any reasons and in the process, petitioner – College was not granted any opportunity with regard to appointment / working of six more doctors. Respondent No.1 after considering the recommendation, renewed permission with an admission capacity of 100 students for the academic session 2006-07, observing as follows :

> "The Central Government, after taking into consideration the recommendation of Dental Council of India and submission made by the subject dental college along with supporting documents as also the fact that permission for previous year was granted based on the same faculty, has decided to allow Chhattisgarh Dental College and Research Institute, Rajnandgaon, to admit 5th batch of students with and annual admission capacity of 100 students for the academic session 2006-2007."

In the Writ petition filed against reduction of seats for the year 2006-07 this Court by its order dated 28.08.2006 granted the following interim order:

> "Having regard to the facts and circumstances of the case, taking into consideration the overall investment in the development of infrastructure and maintenance of the staff of the Dental College, interim relief is granted in terms of the prayer contained in M.(W.)P.No.2668/2006, subject to the following conditions :
>
> (i) That the petitioner shall undertake to clarify and correct whatever deficiencies that have already been pointed out or will be pointed out by the council even hereafter.
>
> (ii) Each student over and above 60 shall be admitted to the institution on a clear understanding that the admission so granted is subject to outcome of this writ petition and he will not therefore claim any equity in the event of this petition being dismissed and an undertaking to the same effect shall be obtained from all such students at the time of admission.
>
> Respondent No.2 is directed to file all the inspection reports submitted by the panel of inspectors, time to time.
>
> In the meanwhile, respondent No.2 is permitted to serve the petitioner a notice communicating the deficiencies, if any existing in the petitioner – institution within a period of one week from today. On such communication, the petitioner shall rectify the deficiencies pointed out and submit compliance report within a period of one week after receiving the communication from respondent No.2 and the same shall be verified by respondent No.2 within a period of further one week from the receipt of compliance

report. The above exercise shall be completed latest by 30.09.2006.

The said order was challenged by way of Special Leave Petition by respondent No.2 before the Apex Court. In view of the order passed by the Union of India giving admission to 100 students, the Special Leave Petition was dismissed as having become infructuous.

It has been submitted by Shri Kanak Tiwari, learned Senior Advocate that petitioner No.1 – College is governed by old regulations under Section 10A read with Section 20 of the Dentists Act, 1948. The relevant portion which is applicable in the case of the petitioner – College is as follows :

> "This process of renewal of permission will continue till such time the establishment of the Dental College and expansion of the hospital facilities is completed and a formal recognition will be granted after four years of the Dental College by the Dental Council of India. Unless the College fulfills the requirements for various stages of development to the satisfaction of the Dental Council of India further admission are liable to be stopped."

However, new regulations provide that process of renewal of permission would not apply after first batch of students take final year examination. It has been informed to this Court that the first batch of students including petitioner Nos. 2 to 21 have completed their four years of studies and have entered into internship period of one year to be completed on 30th September 2007. According to the petitioners, new regulations sought to be applied by the Council provide for

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renewal of permission under Clause 11, which is reproduced for the sake of convenience.

> "11. Renewal of permission :-
>
> (1) Admissions of the next batches shall not be made by the dental college unless the permission granted under regulation 10 has been renewed by the Central Government.
>
> (2) the application for renewal of permission shall be submitted to the Council with a copy to the Central Government, six months prior to the expiry of the current academic session. The recommendation of the Council in all cases of renewal shall be made by 15th June and the Central Government shall issue final orders regarding renewal of permission by 15th July of each year.
>
> Provided that the process of renewal of permission will not be applicable after the completion of phased expansion of the infrastructure facilities and teaching faculty as per norms laid down by the Council and the first batch of students take the final year examinations."

According to the petitioners, inspections were made and whenever any deficiency was indicated, the same was removed. Further, most of the reports were in favour of the petitioner – College. Even, on one occasion the Council had *suo moto* sent 40 students besides the requisite number of students who were already pursuing degree for the academic year 2006 – 07. Accordingly, it was submitted that the Council was satisfied about the standards of the College and its facilities & faculties; otherwise they would have not sent the additional students at their own.

Learned counsel for the petitioners has further heavily relied upon the inspection reports dated 1st & 2nd March, 2007 and 31st May, 2007, which are in favour of the petitioner – College and contended that every year renewal is hanging over the head of the petitioner - College like a sword of Damascus and in the process has drawn our attention to Clause 11 of the existing regulations referred hereinabove wherein it is provided that the process of renewal of permission will not be applicable after the completion of expansion of the infrastructure and teaching faculty as per norms laid down by the Council and after the 1st batch of the students take final year examination. An attempt was made to demonstrate that infrastructure facility is available. According to the learned counsel, now that is the reason the Council had *suo moto* sent 40 students for admission in the petitioner – College and further the 1st batch of students have also completed 4 years degree course and are going to complete internship on 30th September, 2007.

The premises of the petitioner – college were inspected twice; first time on 1st & 2nd March,2007 and second time on 31st May,2007. The following are the inspection reports of the two inspections :

> "The Executive Committee does not recommend to the Central Government recognize the BDS Degree awarded by Pt. Ravishankar Shukla University, Raipur (C.G.) in respect of BDS students of Chhattisgarh Dental College & Research Institute, Rajnandgaon with 100 seats due to the following deficiencies:-
>
> 1. Dr. Sunil Tajeswi, Reader in Conservative Dentistry is not accepted since he is visiting from Bangalore and he has not furnished relieving

order from the previous institute i.e. CIDSH, Lucknow.

2. The following teaching staff are not accepted since they are visiting:-
   (i) Dr. Nitin A Vaidya, Reader, Prosthodontics
   (ii) Dr. (Mrs.) Vidya N Vaidya, Reader, Prosthodontics.
   (iii) Dr. S. Sridhar Reddy, Reader, Prosthodontics.
   (iv) Dr. Siddhartha P. Mosbi, Professor, Oral Pathology
   (v) Dr. S.S. Patil Professor, Conservative Dentistry.
   (vi) Dr. M. Niranjan Kumar Giriraj Naidu, Professor, Oral Surgery.
   (vii) Dr. Dhananjay H. Barde, Reader, Oral Surgery.
   (viii) Dr. Praveen Kumar Lambade, Reader, Oral Surgery.
   (ix) Dr. (Mrs) Usha Shenoi, Professor, Orthodontics
   (x) Dr. Sujata Rath, Reader, Pedodontics
3. Dr. (Mrs.) Manjari Thakur, Professor, Oral Pathology is not accepted since she is visiting from Nagpur.
4. Dr. Chi Koy Wang, Reader, Conservative Dentistry is not accepted since he is visiting from Calcutta.
5. Dr. Sunil Mangalam, Reader, Conservative Dentistry is not accepted since he is visiting from Hyderabad.
6. Dr. Chandika V.V. Sridhar, Reader, Orthodontics is not accepted since he is visiting from Hyderabad.

7. Dr. Maduva Subhash Babu, Reader, Community Dentistry is not accepted since he is visiting from Hyderabad.
8. Dr. Bikash Kumar Pattanaik shown as Lecturer joined on 10.8.2005 does not have relieving order from Govt. Dental College, Mumbai.
9. Dr. Shaju Jacob P, Reader, Periodontics is not accepted since he has not furnished the residence proof.
10. Dr. Durganandan Jana shown as Reader in Physiology is not accepted since he has not completed one year in the previous institution.
11. Clinical material is inadequate (150 both old and new)

The above said decision of the Executive Committee is communicated to you for your information and necessary action in the matter with a request to furnish the Compliance Report by 18-05-2007."

Inspection Report dated 31st May, 2007:

The Executive Committee does not recommend to the Central Government to recognize the BDS Degree awarded by Pt. Ravishankar Shukla University, Raipur (C.G.) in respect of BDS students of Chhattisgarh Dental College & Research Institute, Rajnandgaon with 100 seats due to the following deficiencies:-

1. The following teaching staff are not accepted since they are visiting:-
   (i) Dr. Nitin A Vaidya, Reader, Prosthodontics
   (ii) Dr. (Mrs.) Vidya N Vaidya, Reader, Prosthodontics.
   (iii) Dr. S. Sridhar Reddy, Reader, Prosthodontics.

(iv) Dr. Siddhartha P. Mosbi, Professor, Oral Pathology

(v) Dr. S.S. Patil Professor, Conservative Dentistry.

(vi) Dr. M. Niranjan Kumar Giriraj Naidu, Professor, Oral Surgery.

(vii) Dr. Dhananjay H. Barde, Reader, Oral Surgery.

(viii) Dr. Praveen Kumar Lambade, Reader, Oral Surgery.

(ix) Dr. (Mrs) Usha Shenoi, Professor, Orthodontics

(x) Dr. Sujata Rath, Reader, Pedodontics

2. Dr. (Mrs.) Manjari Thakur, Professor, Oral Pathology is not accepted since she is visiting from Nagpur.

3. Dr. Chi Koy Wang, Reader, Conservative Dentistry is not accepted since he is visiting from Calcutta.

4. Dr. Sunil Mangalam, Reader, Conservative Dentistry is not accepted since he is visiting from Hyderabad.

5. Dr. Chandika V.V. Sridhar, Reader, Orthodontics is not accepted since he is visiting from Hyderabad.

6. Dr. Maduva Subhash Babu, Reader, Community Dentistry is not accepted since he is visiting from Hyderabad.

7. Clinical material is inadequate (150 both old and new)

The Government of India and competent authorities viz. State Government of Chhattisgarh and concerned University may be asked not to admit the students for the academic year 2007-2008 at the said college till the Central Government recognize the BDS Degree

awarded by Pt. Ravishankar Shukla University, Raipur (C.G.) in respect of BDS students of Chhattisgarh Dental College & Research Institute, Rajnandgaon."

Petitioner – College responded by writing number of letters as contained in Annexure P/13, P/16 and P/17 by furnishing various details and praying the Council for recommending to Union of India for grant of recognition. Learned counsel for the petitioners has drawn our attention towards the fact that in violation of the new regulations the Council got the inspection of the college done on 1st – 2nd March 2007, on the basis of which a communication was sent on 8th May, 2007 to petitioner No.1 – College enlisting the deficiencies which were promptly replied by petitioner No.1 – College on 16th May, 2007, as contained in P/20 indicating therein that the only deficiency pointed out by the Council was with regard to several faculty members terming them to be the visiting Professors although all of them were full time faculties; none of them were recruited in the year 2007-08 and were working continuously on the full time basis with the college and were getting their salary and earlier the council has approved some of the faculties for the last five years.

Our attention has also been drawn to the fact that respondent No.1 has written to the Council on 03.07.2007 and 04.07.2007 enclosing therewith the report obtained from the Director, Medical Education, Government of Chhattisgarh, dated 29.06.2007 (which is in fact, in favour of the petitioner) and final compliance report of the college dated 27.06.2007 directing the Council to reconsider the case of the petitioner – College for recognition by relaxing some rigid

conditions imposed upon the petitioner – College. However, in spite of the same, the Council sent a negative recommendation on 09.07.2007 to respondent No.1 and on the basis of the same, respondent No.1 refused recognition for the year 2007-08 by letter dated 25.07.2007, observing as follows :

> "3. After taking into consideration the number & nature of deficiencies pointed by the Council, it has been decided for not recognizing the BDS Degree awarded by Pt Ravishankar Shukla University, Raipur (CG) in respect of BDS students of Chhattisgarh Dental College, Rajnandgaon, Chhattisgarh involving the permission for admitting its next batch of students in BDS Course for the academic session 2007-08."

It has been contended on behalf of the petitioners that the said decision is not only arbitrary, *mala fide* but without application of mind. However, petitioner No.1 – College was further advised to take necessary steps to rectify the deficiencies and forward the compliance report at appropriate time to the Secretary, Dental Council of India for recognition of BDS Degree awarded by the Pt.Ravishankar Shukla University, Raipur (CG) in respect of BDS students of petitioner – College.

The petitioners brought on record certain inspection reports and had submitted that even the inspection reports which are not on record are also in favour of the petitioner – College. In spite of the same, negative communication has been sent by the Council which is led to irreparable loss and injury to petitioner – College. Accordingly, the record was sent for from the Council and was produced on the last date of hearing.

Petitioners No.2 to 21 were about to finish their internship and are facing bleak future as the Council came to the conclusion that the BDS examinations conducted by the Pt. Ravishankar Shukla University are not worth recognition and in case the recognition is not granted, their future will hang in balance, though they belong to old and prestigious dental college of Chhattisgarh.

Learned counsel for the petitioners further contended that the faculty, namely, Dr. S.P. Mosby attended the inspection on 1st & 2nd March,2007 in the college, however, this time he was not accepted as permanent faculty and was only accepted as visiting Professor of the college and was considered to be resident of Amravati (Maharashtra). However, said Dr. S.P. Mosby attended the inspection in May,2007 and has been treated as a full time faculty in Maitre Dental College, Durg and considered as full time Professor. Learned counsel further contended that for the year 2005-06 the said Professor was considered to be regular staff of the petitioner- College. It has been further contended that one faculty namely Prof. Dr. Manjari Thakur attended two inspections on 1st & 2nd March, 2007 and 31st May, 2007 in the college of the petitioner No.1, but was not considered as full time professor and was treated as visiting Professor, although she has been working in the college of the petitioner since 2001 and has been accepted by the Council as full time Professor and also by the Union of India. It was pointed out that the said deficiency was not treated as deficiency by the Union of India in the year 2006-07 and permission was granted.

Learned counsel for the petitioners has placed reliance on the decision of the Apex Court in the case of ***Mridul Dhar (minor) and***

another Vs. Union of India and others (2005) 2 SCC 65 wherein the Apex Court has fixed the time schedule for the purposes of admission and 30th September is the last date for admissions. The relevant schedule is as under:

"Schedule for admission	First MBBS/BDS course		Postgraduate courses		Superspeciality course
	All-India Quota	State quota	All-India quota	State quota	
Conduct of entrance Examination	Month of May	Month of May	Second Sunday of January	Mid-Jan to mid-Feb	May-June
Declaration of result of qualifying exam/ entrance exam	By 5th June	By 15th June	Third week of Feb	By 28th February	By 30th June
First round of counselling/ admission	20th to 29th June	To be over by 17th July	5th March to 22nd March	To be over by 25th April	To be over by 25th July
Last date for joining the allotted college and course	18th July*	29th July	7th April	1st May	31st July
Second round of Counselling or allotment of seats from waiting list	1st August to 8th August	25th to 28th August	No second counselling	No second counselling	No second counselling
Last date for joining for candidates allotted seats in second round of counselling or from the waiting list	22nd August (seats vacant after this date will be surrendered to the State/colleges)	30th August	After 7th April, vacant seats will stand surrendered back to the States/ colleges	Not applicable	Not applicable
Commencement of academic session	Between 1st August to 31st August		2nd May		1st August
Last date up to which Students can be admitted against vacancies arising due to any reason	30th September		31st May		30th September

Learned counsel for the petitioners further contended that for the last year on the same faculty members renewal was done. However, again on the same faculty members now the objection has been raised which is baseless and cannot be relied upon. In support, learned counsel has relied upon the decision of the Himachal Pradesh High Court in the case of ***State of Himachal Pradesh Vs. Union of***

India and another AIR 1998 Himachal Pradesh 46 wherein it was held as under:

> "86. What relief we should grant in this case after setting aside the recommendation of the Medical Council of India? Should we remit the matter to the Government of India for further consideration or any other course is open by which effective justice could be rendered? Our discussion supra as to the nature of the regulations, the requirements to be met with, the extent to which the State Government has complied with the requirements and there being no deficiencies at all with regard to starting of first year M.B.B.S. Course, no purpose will be served by remitting the matter to the Government of India which in turn will have to consult the Medical Council of India for according "formal permission". That would only entail further delay which is obviously avoidable; it serves no purpose either from legal or factual point of view as regards initial permission for the first year. Whether staff and infrastructural facilities are available for the first year no further facts need be found. What is required is only a formal grant of permission without any further enquiry. Even so we would have in order to adhere to rigid formalistic requirement of enabling the statutory authority to perform a routine mechanical function resorted to that course of action, but the existing situation does not brook any further delay. The apprehension expressed by the learned Advocate General appears to be real. Eversince the results of the entrance test were published in July, 1997 the successful students have been eagerly waiting for admission. Unless the 50 seat in Dr. Rajendra Prashad Medical College at Tanda in question are filled, the seats in Dental College and Ayurveda College cannot be filled. As the classes have already been started in

the Indira Gandhi Medical College, Shimla in the month of September, 1997 any further delay with regard to the starting of classes in Dr. Rajendra Prashad Medical College, Tanda will result in one academic year going waste not only in respect of Tanda College but also Dental and Ayurveda Colleges. This will have larger deleterious affects: the unrest among the students is likely to disturb the even tempo of the society. The amount spent by the State is quite huge having regard to its limited resources, the monthly salaries bill on the teaching and other staff is ten lakh rupees. These special facts propel us to depart from the usual relief which would otherwise have been granted in the normal course."

Learned counsel for the petitioners also relied upon the decision of the Apex Court in the matter of ***Dental Council of India Vs. Subharti K.K.B. Charitable Trust – (2001) 5 SCC 486*** wherein the Apex Court issued the following directions:

"18. After being satisfied that the College is complying with all the stated requirements, during the course of hearing of the matter, learned counsel for the parties agreed that considering the facts and circumstances of the case and the order passed by this Court on 03-05-2000, the following directions be issued:

1. As far as the grant of requisite permission to the College is concerned, the current status of the facilities would justify grant of permissions to admit up to 100 students in the first-year, and renewals for the second-year, third-year and the fourth-year BDS course. Insofar as the teaching staff is concerned, the College undertakes to ensure provision of complete teaching staff as per the Regulations and to the satisfaction of the Council and the Central Government.

2. Subject to satisfaction of the prescribed conditions and conduct of the examinations, the final recognition shall be considered as per the Regulations.

3. The Dental Council of India is directed to forthwith forward to the Central Government its recommendations consistent with the aforesaid.

4. The Central Government is further directed to grant appropriate permissions/renewals based on the recommendations of the Dental Council of India forthwith, in any event, not later than a period of three weeks from the date of recommendations made by DCI.

5. The order directing suspension of classes shall stand withdrawn with respect to eligible students. For this purpose, eligible students shall be of the following two categories:

(i) Those students who have appeared in any common entrance test held by any State Government (whether by itself or through any other authority) and have obtained not less than 50% of the total marks in English and Science subjects taken together at the qualifying examination or 50% of the total marks in English and Science subjects at the competitive entrance examination.

(ii) Those students, other than those falling in (i) above, who have obtained not less than 50% marks in English and Science subjects taken together at the qualifying examination, the total number of such students not exceeding 15% in each batch.

6. The respondent College is directed to give to DCI and B.R. Ambedkar University, Agra, within six weeks, the list of the "eligible students" admitted by it (other than those allotted by the Director General, Medical Education, State of U.P.) and the marks

obtained by such students in the common entrance test held by the State Government and the qualifying marks together with the marksheets of CET and the qualifying exam. The respondent College shall only permit such "eligible students" to attend classes and appear in the examinations.

7. The University is directed to permit the eligible students as mentioned above, who have attended requisite number of classes in accordance with the Regulations of DCI, to take the appropriate examinations in accordance with the rules of the University.

8. Director General, Medical Education may allot further students on the aforesaid basis in accordance with the rules, provided he is satisfied that sufficient time is available prior to examination for completing requisite number of classes as per the Regulations of DCI."

The Secretary, Dental Council of India who was present before the Court, could not explain the criteria for clinical material and therefore could not substantiate the deficiencies indicated in the report i.e. "Clinical material is inadequate (150 both old and new). Shri Manindra Shrivastava, learned Senior Advocate for respondent No.2-Council submitted that although initially permission was granted to start BDS course and it was renewed as well, however, the Council was receiving various reports from all over the country that there are notional growth of dental colleges which was not up to the mark and little professional knowledge is always very dangerous. It has been further submitted that after various inspections it was found by the Council that there are various deficiencies in the petitioner-college, and the first & foremost deficiency is of the faculty which according to the

Council was visiting faculty and second deficiency was clinical material is inadequate (150 both old and new). Thereafter, the petitioner – college was called upon to explain regarding the aforesaid deficiencies and after considering the letter wherein certain explanation was given by the petitioner – college, an Inspector was appointed by the Council to inspect the petitioner- college to verify the alleged compliance and after the inspection conducted on 31-05-2007, the report was submitted before the Executive Committee of the Council. The said report was considered by the Executive Committee on 09-06-2007 and in light of the said inspection report it was decided by the Executive Committee not to recommend to the Government of India for recognition of BDS degree course of the petitioner –college. The said recommendation is taken into consideration by the Government of India while rejecting the renewal of the petitioner – college. In the process, the Government of India had informed the petitioner –college not to admit any students in BDS course during the session 2007-08. Learned Senior Counsel Shri Manindra Shrivastava further submitted that the Hon'ble Apex Court has categorically directed the Union of India as well as the Council to strictly adhere to the time schedule prescribed in the existing Dental Council of India Regulations, 2006 and in such circumstances it was submitted that the Union of India was not in a position to verify the compliance report on the deficiencies pointed out by the Council through the Council's Inspector for the purpose of taking necessary decision for the academic session 2007-08. It has been further contended by Shri Manindra Shrivastava that the petitioner college has neither facilities nor faculty for regular

teaching purpose and beside it there was some inadequate clinical material.

In support of the arguments learned counsel for the Council had relied upon the judgment of the Apex Court in ***re Civil Appeal Nos. 3576-77/98 – Medical Council of India Vs. State of Karnataka and others*** wherein it was observed as under:

> "... A medical student requires grueling study and that can be done only if proper facilities are available in a medical college and hospital attached to it has to be well equipped and teaching faculty and doctors have to be competent enough that when a medical student comes out he is perfect in the science of treatment of human beings and is not found wanting in any way. Country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study..."

> "...What we have said about the authority of the Medical Council under the Indian Medical Council act would equally apply to the Dental Council under the Dentists Act..."

Learned counsel for the Council also relied upon the case of ***Mridul Dhar (supra)*** regarding time schedule fixed by the Apex Court.

Learned counsel for the Council further submitted that the interest of the students and the facilities given to them have to be top priority and in support of the same he relied upon the judgment of the Supreme Court in the matter of ***AP Christians Medical Educational***

Societies Vs. Government of Andhra Pradesh and another – AIR 1986 SC 1490 wherein it has been observed as under:

> "...10. Shri K.K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the managements and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical college established by the Daru Salam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University, Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owns its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws..."

Reliance has also been placed ***in re SLP No. 15092/2006 – Dental Council of India Vs. GDR Educational Society*** wherein the Supreme Court observed as under:

> "This is a case wherein the petitioner is the Dental Council of India. The respondent is a Dental

College, who filed a Writ Petition before the High Court of Chhattisgarh at Bilaspur and by virtue of an interim order, 100 students have been sanctioned to the respondent college. This order is challenged before this Court. The Dental Council of India had inspected the college and made a recommendation that the college may be permitted to run from the academic year 2007-2008. However, after considering the recommendation of the DCI, the Union of India permitted the respondent college to start the course from the academic year 2006-2007. Counsel for the respondent submits that the students were already admitted pursuant to the interim order passed by the High Court and are continuing in the courses. This early admission even before the permission being granted is seriously objected to the counsel for the Dental Council of India, as the admission itself was illegal. But in view of the peculiar circumstances of the case, we direct the students may continue their course but strongly disapprove the interim order passed by the High Court granting admission even before the college was permitted to run by the appropriate authorities.

The special leave petition is disposed of accordingly."

In substance we find that there are only two grounds on the basis of which the recognition as also the final permission to admit the students was refused by order dated 25.7.2007, firstly the faculty and secondly inadequacy of clinical material. The petitioner – College has explained that they have permanent faculty which has been sufficiently explained and for this reason last year the Government of India has not accepted the similar recommendation of the Council and had granted permission. As far as inadequate clinical material is concerned, the petitioner- College has adequate faculties, equipment & hospital with

100 beds/chairs and the patients are visiting the hospital. We had asked a pertinent question regarding the criteria fixed for clinical material to the learned counsel for the Council and its Secretary who was personally present in this Court and we were informed that there is no fixed criteria for clinical material. Therefore, it can be said that there was no material before the Government of India to come to the conclusion that there were inadequate clinical material. Further, though the same faculty was available last year, the Government of India had granted renewal. We further find as referred to hereinabove that the final year batch has already appeared in the examination and they are about to complete their internship by 30.9.2007. In these circumstances, the impugned order passed by the Government of India is liable to be quashed. Accordingly, the impugned order dated 25.7.2007 passed by respondent No.1 - Government of India is hereby quashed. We have no doubt about the fairness of the Government of India and therefore, we would not like to assume the role of Sanctioning Authority by directing the opposite parties to grant permission for the 5th BDS course. However, interest of justice would suffice, as such we direct the Government of India to consider the matter afresh and decide the same within one week from today so that no hurdle is created in the process of admission for which the last date fixed is 30-09-2007 in accordance with the observations made hereinabove and in accordance with law.

In light of the above, the writ petition stands allowed.

The Registrar General of this High Court is directed to communicate this judgment by e-mail to the respondents (E mail address of the Council is dciindia@hotmail.com) and shall also bring

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the same on Internet immediately without any delay so that the process is completed in light of the directions issued by the Apex Court in re **Mridul Dhar (Supra)**. Learned counsel for the parties are directed to communicate this judgment to the respondents immediately.

Costs easy.

Let certified copy of this judgment be issued to the parties today itself in accordance with the rules.

Sd/-
Ag. Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge

21-09-2007

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